

1 Q Those are both within the coverage area, existing 1
2 mil coverage area, of KKSI, are they not?

3 A Yes, they are.

4 Q Did you, did you ever mentioned those proposals to,
5 to Bruce Linder or to his father?

6 A Yes, I did.

7 Q Was any interest expressed by them in those --
8 either of those?

9 A No, there was none.

10 Q Did you ever -- did you mention those to, to
11 Carmella?

12 A No, I did not, not that I remember.

13 Q Those are about as far from, from Eddyville as Eldon
14 is, are they not, each of those --

15 A Yes, they are.

16 Q -- each of those towns? And those -- aren't those
17 allocations also Class C-3?

18 A Yes, they are.

19 Q Weren't those allocations made -- they were proposed
20 in 1990 and made by the Commission at the end of '91, December
21 of '91?

22 A I can't remember the exact dates.

23 Q But you were -- you do remember that they were
24 essentially on the buffet at about the same time as the Eldon
25 hors d'oeuvre was put out there?

1 A Correct.

2 Q If you don't mind a culinary metaphor.

3 (Tape 1 ends at 10:52 a.m. Tape 2 begins at 11:00
4 a.m.)

5 MR. WARD: Your Honor, I'd like to have marked as
6 Rivertown Exhibit 17, is that it, Rivertown Exhibit 17 a one
7 page statement from Owl Engineering dated May 14, 1983
8 addressed to Mark McVey.

9 JUDGE FRYSIK: What year was that?

10 MR. WARD: Did I say '83? I meant '93. Deja vu all
11 over again.

12 (The document that was referred
13 to as Rivertown Exhibit No. 17
14 was marked for identification.)

15 BY MR. WARD:

16 Q Do you recognize that copy, Mr. McVey?

17 A Yes, I recognize it.

18 Q Did you receive that on May 14, '93 or shortly after
19 May 14th?

20 A Yes, I did.

21 Q How did this -- had you requested it of -- requested
22 that Owl Engineering bill you \$200 for, for a 70 dBu overlap
23 study?

24 A No. I believe there was a -- and I'd never received
25 it.

1 Q You never received what?

2 A A 70 dBu overlap.

3 Q Well, have you ever received a 70 dBu overlap study
4 of September 13, 1991 that is referred to here?

5 A I received an overlap study, but I don't remember
6 the exact date.

7 Q So you received an area to locate map indicated on
8 the 70 dBu contour overlap --

9 A Correct.

10 Q And that was dated August 8th?

11 JUDGE FRYSIAK: You must give your answer.

12 WITNESS: I'm not certain if that's --

13 BY MR. WARD:

14 Q You don't know whether the August 8th 70 dBu limited
15 area to locate map is the same as the September 13, 1991 area
16 -- 70 dBu overlap study or not?

17 A No, I do not.

18 Q Did you ask them after you received this bill? Did
19 you ask them about that?

20 A No, I did not.

21 Q Have you paid this bill?

22 A Yes, I did.

23 Q Have you been reimbursed for it by, by Olde Towne
24 Communications?

25 A No.

1 MR. WARD: Your Honor, while we're at it, I'd like
2 to move the admission of, of this exhibit, Rivertown Exhibit
3 17.

4 MR. NEELY: No objection.

5 JUDGE FRYSIK: Received.

6 (The document that was
7 previously marked for
8 identification as Rivertown
9 Exhibit No. 17 was entered into
10 evidence.)

11 MR. WARD: And I'd also like to move the admission
12 of Rivertown Exhibits 6 and 7 which were the July 30, '91 and
13 August 8, '91 communications from Owl Engineering to Mr.
14 McVey.

15 MR. NEELY: No objection to either exhibit.

16 JUDGE FRYSIK: Received.

17 (The documents that were
18 previously marked for
19 identification as Rivertown
20 Exhibits No. 6 and 7 were
21 entered into evidence.)

22 BY MR. WARD:

23 Q Now, at page 10 of your statement of your exhibit,
24 Mr. McVey -- do you have it in front of you?

25 A Yes.

1 Q Turn to page 10.

2 JUDGE FRYSIK: 10, did you say?

3 MR. WARD: 10, yes, sir. I'm sorry.

4 BY MR. WARD:

5 Q At the first, first full paragraph on that page you
6 say that you thought and thought and it makes economic sense
7 to -- for the Eldon station to duplicate the programming of
8 KKSI regardless of who receives the construction permit. Now,
9 I guess by that you mean whether, whether Sample receives it
10 or, or Mr. Brown's company, Rivertown, is awarded the permit.
11 You think it would make economic sense for the Eldon station
12 to duplicate KKSI? That's your, that's your personal opinion?
13 Correct?

14 A I think any, any station that duplicates another
15 station would make good economic sense under --

16 Q In this -- generally or in this particular market
17 area?

18 A Especially this market area.

19 Q You say especially this market area?

20 A Correct.

21 Q And that's because you think this area suffers from
22 a great deal of competition?

23 A A great deal of competition and a great deal of
24 economic disparity.

25 Q Disparity meaning what?

1 A It's a -- it's had hard economic times.

2 Q And by this area are you referring to -- to what,
3 all the state of Iowa or southeastern Iowa?

4 A Particularly southeast Iowa.

5 Q The Ottumwa, Oskaloosa area?

6 A Ottumwa, Oskaloosa.

7 Q Fairfield?

8 A Burlington, Fairfield, the entire region.

9 Q So you think as a stand-alone proposition it's
10 economically risky?

11 A My opinion, yes.

12 Q So you're -- it's safe to conclude that you don't
13 feel -- your feelings aren't hurt that Bruce Linder didn't
14 select you to be his, his partner in, in a McVey
15 communications company?

16 A No, they're not hurt.

17 Q I'm sorry?

18 A No, they're not hurt.

19 Q Would you expect -- regardless of who wins the, the
20 permit and assuming that there is no joint operation, LMA or
21 what have you, but assuming a stand-alone operation of the
22 Eldon station, would you expect it to be competing with KKSI
23 for, for advertising dollars?

24 A I suspect it probably would, yes.

25 Q And competing for audience?

1 A Correct. Yes, I do, compete for audience.

2 Q I'm sorry?

3 A I do think it would compete for audience.

4 Q And that -- you expect that would translate into

5 competition for, for revenues?

6 A Yes. I think it would be competition for us.

7 Q Is it possible that the --

8 MR. MILLER: Objection.

9 BY MR. WARD:

10 Q How long have you known David Brown, Mr. McVey?

11 A I think we met in 1983.

12 Q And at that time were you both working for a Linder

13 station?

14 A No, we were not.

15 Q But there have been periods when you've been working

16 at, at the same station and that had been a Linder-owned

17 station? Is that correct?

18 A Yes. We have worked together and separate stations.

19 Q Have you ever received any indication from the

20 Linders -- in 1991/92/93 time frame that they, they are, are

21 unhappy with Mr. Brown having proposed the Eldon -- or brought

22 in the potential competition from Eldon?

23 A They didn't directly say that they were unhappy with

24 the person. Anybody's unhappy at added competition.

25 Q Did they -- did Bruce Linder or John Linder or Don

1 Linder ever indicate to you displeasure at the fact that, that
2 Bill Collins had been hired away from KKSI by, by David Brown?

3 A Bruce Linder felt Bill Collins was an excellent
4 employee and a -- an asset to a radio station. He probably
5 wanted him.

6 Q Well, that's all true. That's true, but that's not
7 quite responsive to my question.

8 A They didn't ask --

9 MR. NEELY: Would you rephrase the question, please?

10 BY MR. WARD:

11 Q Did Bruce Linder indicate to you that he was unhappy
12 that, that -- was unhappy that David Brown had hired, hired
13 him away?

14 A No, he didn't indicate he was unhappy with David
15 Brown.

16 Q He was, he was unhappy to lose Bill Collins?

17 A Yes. He was unhappy to lose him.

18 Q Now, I'd like you to turn to Rivertown Exhibit 13.
19 That's the, the Harris Allied Equipment proposal. Do you see
20 that? Do you have that in front of you?

21 A Yes, I do.

22 Q And have you seen this before?

23 A Yes, I have.

24 Q And can you describe the circumstances under which
25 you saw it, under which you saw it first?

1 A It's hard for me to remember, but it seems to me
2 Carmella showed it to me and asked me if it was -- asked me to
3 review it and see if it was the equipment that I'd recommend
4 in constructing a station. I can't remember the exact words.

5 Q And did you go through it and review it?

6 A Yes, I did.

7 Q Page by page?

8 A Yes.

9 Q Item by item?

10 A Item by item.

11 Q And are the the handwritten markings on. on this

1 did you ask her what her programming plans were, how she
2 planned to program the station?

3 A Well, this was already created before I talked to
4 her about it, so I did not talk to her about her plans for
5 programming, no.

6 Q Well, turn to page, page 21 and -- pages 21 and 22
7 concerning air studio equipment.

8 A I'm there.

9 Q And page 23 is apparently missing for all time.
10 Page 24 is production studio equipment and that carries over
11 through 25 and 26. This proposal apparently assumes an on air
12 studio and a -- and another studio used just for production.

13 A Yes, that's right.

14 Q Right?

15 A Yes.

16 Q It doesn't take a rocket scientist to figure that
17 out. Looking at, looking at the -- pages 24 through 26, it
18 appears that you, you struck out the majority of items that
19 Harris proposed for the production studio.

20 A Radio stations do not use turntables, so I did take
21 out turntables.

22 Q Harris still sells turntables, though, or would like
23 to?

24 A Harris would like to sell you anything they could.

25 Q Okay. But that -- you took out more than

1 | turntables?

2 | A Yes, I did.

3 | Q And their -- you knocked their, their proposed

4 | budget from \$44,600 down to \$14,000 -- I don't know -- well --

5 | MR. NEELY: Are you referring to the last page

6 | there?

7 | MR. WARD: I'm referring, yes, on page 26.

8 | MR. NEELY: 26, page 26 at the top.

9 | MR. WARD: Bottom of page 26.

10 | BY MR. WARD:

11 | Q As you went through this, did you discuss with, with

12 | Ms. Sample what kind of production she was planning?

13 | A I don't recall discussing the type of graphics. A

14 | production studio is basically a production studio.

15 | Q That's fungible? It's quite possible for production

16 | to be done in one -- a studio for one station and materials to

17 | be broadcast on another station?

18 | A It's possible.

19 | Q It -- all the time with respect to commercial

20 | announcements -- stations actually cooperate in the exchange

21 | of commercial announcements for advertisers that they have in

22 | common? Correct?

23 | A Yes. You can produce a commercial in one station

24 | and use it at another station.

25 | Q If this were your station and the Eldon station were

1 | yours and you also had an interest in the, in the Eddyville
2 | station, you might -- particularly if the Eddyville station
3 | had a studio up in Ottumwa, you might very well do production
4 | in Ottumwa for the, for the Eldon station, would you not?

5 | MR. MILLER: Objection.

6 | MR. WARD: Speculative.

7 | MR. MILLER: It's very speculative and it's not a
8 | fact -- based on any facts of evidence here.

9 | MR. WARD: Well, it's not -- it would help explain
10 | why the production studio --

11 | JUDGE FRYSIK: The question is speculative,
12 | although the question before that established the principle
13 | you were looking for and that is the conservation of --

14 | BY MR. WARD:

15 | Q Turning to the last -- I'm sorry, the next to the
16 | last page of that exhibit --

17 | A Is that 31?

18 | Q Yes, but it's not -- no. I'm sorry. It's page,
19 | it's page 32, but there's no number on it. The page got
20 | twisted in the duplication process before I ever received it,
21 | but it has a -- it's the summary sheet for the pricing on the
22 | packages. The handwriting on those -- on that sheet is yours?

23 | A Yes, it is.

24 | Q And Group L, Remote Pickup Equipment, Harris had
25 | proposed a budget item of \$4,500 or so which is struck through

1 and no, no substitute number is, is suggested there. Is that,
2 is that because you suggested to her that she not have any
3 remote pickup?

4 A I buy all the remote pickup units used and it
5 changes prices as Marty gets them in their factory.

6 Q And you, you recommended that to her, that she, that
7 she buy used equipment?

8 A Whenever possible she should buy used equipment,
9 yes.

10 Q But that -- I agree with that, but I -- my question
11 was whether you -- is that what you told her at the time?

12 A I can't remember what I told her.

13 Q You did make some explanation for the, for the
14 changed numbers that you were proposing to her?

15 A I think I did, yes.

16 Q Did she consult with you on any other aspects of her
17 budget and equipment?

18 A I believe she occasionally -- or once asked how many
19 employees and how many different things such as that. Very
20 little, other than the electronics.

21 Q Asked you how many employees -- what? How many
22 employees station KKSI had?

23 A No. What it would take to operate a station
24 independently.

25 Q Independently of KKSI? And what did you tell her?

1 A It depended upon the type of operation.

2 Q Well, what did she respond to that?

3 A Whether it was automated, whether it was live. She

4 didn't -- I just don't remember exactly how it was --

5 Q Well, did you propose that she have automated --

6 automation equipment here?

7 A No, I did not recommend one way or the other.

8 Q Do you know whether she proposes any automation

9 equipment?

10 A According to this, it doesn't look like it.

11 Q If she doesn't have automation equipment, what are

12 the staffing implications?

13 A It varies a lot.

14 Q What do you mean?

15 A That varies a lot, too, depending on how many

16 operator --

17 Q Well, did she tell you --

18 A How many hours of the day it's operating.

19 Q Did she tell you how many hours she planned to

20 operate?

21 A She never did tell me.

22 Q Did she tell you what format she planned to follow?

23 A No, she never did.

24 Q Did you ask her?

25 A I think I have asked her, yes.

1 Q Do you think she's being secretive or that she
2 doesn't know?

3 A I don't know.

4 Q You don't know? Any other aspects of her, her plans
5 that you -- that she consulted with you on?

6 A Not that I remember.

7 Q Did she, did she seek your recommendation on outside
8 counsel or on, on engineering counsel?

9 A She asked me where to find out about it and I said
10 trade magazines or advertising.

11 Q And you, of course, mentioned that your station and
12 you personally had been represented by the Miller & Miller
13 firm?

14 A I could have. I can't remember.

15 Q I would hope that you would have. Now, could you
16 back up in the exhibit book to, to Rivertown Exhibit 12. This

17, in the exhibit book of the Rivertown Exhibit 12. This

1 Q Okay. Is that the kind of form you might have --
2 have you seen that kind of form before?

3 A No, I never have.

4 Q Mr. Miller didn't send you one like that in 1988
5 when you planned your Eddyville application?

6 A I did my own, a spreadsheet in 1988.

7 Q Back up one more exhibit to Rivertown Exhibit 11,
8 Equipment List of Sample Broadcasting. Recognizing that this
9 is, this is a 8-1/2" x 11" Xerox of what, what appears to be
10 smaller pages from a -- from perhaps a shorthand notebook or
11 something, have you, have you seen this before?

12 A I don't remember seeing it.

13 Q I'm sorry?

14 A I don't remember seeing it.

15 Q On the first page it says "Transmitter, compact IFU
16 and asks details for kilowatt hours" and the next line says,
17 "Power, call Dietz Brothers, Spicer, Minnesota. How much does
18 it cost to build 400 foot tower, six bays, 3-1/4" transmission
19 lines, 3 communications antennas and so forth." Is that -- I
20 understand you never -- you've never seen this before, but
21 would that be a fair summary of advice that you might have
22 given Ms. Sample during this, during this period of your --
23 she was consulting with you on equipment?

24 A It very well could have been. That's the tower I'd
25 like to building.

1 Q I'm sorry?

2 A That's the type of tower that I have constructed in
3 the past.

4 Q Well, it's specific in terms -- not just in terms of
5 the tower height, but it describes all the equipment that's
6 going to be hung on it.

7 A But the tower is determined by the --

8 Q Yes. I understand.

9 A -- and the components.

10 Q I understand that. When you were, when you were
11 discussing the -- her equipment needs with her, did she have a
12 -- was she taking notes?

13 A I'm not certain. I can't remember if she was or
14 not.

15 Q You don't know whether, whether these were
16 contemporaneous notes of what you were telling her?

17 A I just don't -- I can't recall.

18 Q They seem to have a lot of, a lot of highly
19 technical jargon that it's kind of unlikely that she would
20 have written down spontaneously, is it not?

21 A That's true.

22 Q Because she's not technically oriented?

23 A She could have spoken to other engineers. I don't
24 know.

25 Q Are there a lot of engineers, a lot of consultant

1 radio engineers in the Ottumwa, Oskaloosa, Eddyville area?

2 MR. MILLER: Objection. With telephones people can
3 talk to people anywhere.

4 MR. WARD: All right. That's true. Withdraw. I
5 have no further questions, Your Honor.

6 JUDGE FRYSIK: All right. Thank you.

7 MR. NEELY: I do have a few questions on redirect,
8 Your Honor. If I may have five minutes to review my notes.

9 JUDGE FRYSIK: Five minutes.

10 (Off the record.)

11 JUDGE FRYSIK: All right. Back on the record. Mr.
12 Neely?

13 MR. NEELY: Yes. Just a few, just a few redirect
14 questions, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. NEELY:

17 Q Mr. McVey, Mr. Ward asked you some questions about
18 your preparing your original application for the Eddyville
19 station and he was asking you some questions about the
20 financing of that application. Why was it that you did not
21 use the initial funding source that you -- you said your
22 funding fell short, according to you. What did you mean by
23 that?

24 A The gentleman who had the funding which was one of
25 the applicant's relatives died. His son did not want to

1 proceed with it.

2 Q So your funding source died and his estate or his
3 heirs didn't want to follow through with his commitment?

4 A Correct.

5 Q All right. At that point what did, what did you do
6 to find substitute financing?

7 A Visited several lending institutions and a hospital
8 investment group and no one was interested in getting involved
9 in this.

10 Q Roughly how many would that have been? Three or
11 four or five or more?

12 A Four.

13 Q Roughly. Was -- you mentioned that you talked to
14 John Linder. Was he one of the -- included in that group of
15 four or was that in addition to that group?

16 A It was in addition to that group.

17 Q What did John Linder say when you approached him?

18 A He was interested in, you know, in funding the radio
19 station. He was not interested in other applicants being
20 involved.

21 Q Did you talk terms, loan terms, with Mr. Linder?

22 A Not at that time, I did not talk to him.

23 Q Were you still continuing to find alternate
24 financing sources?

25 A Yes, we were trying.

1 Q How did it happen that -- if you were looking for
2 alternate sources, how did it happen that you finally decided

1 Rivertown's exhibits there before you. Would you turn to
2 Rivertown Exhibit 6 and 7? When you say the map of the 70 dBu
3 contour, are you referring to Rivertown Exhibit 6 or Rivertown
4 Exhibit 7?

5 A 7. 7 is the 70 dBu contour.

6 Q All right. So when you paid your -- paid them --
7 when you -- referring you again to Rivertown Exhibit 17, if
8 you look down in the description about half-way down the page,
9 there's a date. It's a little blurry here but it appears to
10 be 9/13 of '91.

11 A Yes.

12 Q Did you happen to take any notice of that date when
13 you, when you paid the bill?

14 A No, I didn't.

15 MR. NEELY: I have no further questions on redirect
16 of this witness.

17 MR. WARD: I have no, no further recross.

18 JUDGE FRYSIK: All right.

19 MR. WARD: My only, my only regret is we haven't
20 given you that laugh I promised you, Mr. -- I totally forgot
21 to ask him about his -- name, Cornball, but I was too late.

22 JUDGE FRYSIK: I understand. All right, Mr. McVey.
23 Thank you very much. You are excused.

24 (Whereupon, the witness was excused at 11:46 a.m.)

25 MR. NEELY: What is Your Honor's preference? To

1 continue with Mr. Linder. He's in the witness room or -- for
2 awhile or break now or would you rather --

3 JUDGE FRYSIAK: What's your pleasure?

4 MR. WARD: I prefer to break and come back about
5 1:00. I don't think I'm going to be very long with Mr.
6 Linder.

7 JUDGE FRYSIAK: All right. Get back at 1:00.

8 (Lunch recess from 11:46 a.m. to 1:08 p.m.)
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A F T E R N O O N S E S S I O N

JUDGE FRYSIAK: We're on the record.

Whereupon,

BRUCE LINDER

was called as a witness and, after having first been duly sworn, was examined and testified as follows:

JUDGE FRYSIAK: Before we begin, any preliminary matters?

MR. NEELY: I have none, Your Honor.

MR. WARD: None here.

JUDGE FRYSIAK: All right. Would you please state your full name and address?

WITNESS: Bruce Harrison (Phonetic) Linder and my address is 215 Lake Avenue, Spicer, Minnesota.

JUDGE FRYSIAK: Okay. Thank you very much.

DIRECT EXAMINATION

BY MR. NEELY:

Q Mr. Linder, you have before you a document which is titled or identified as Sample Broadcasting Company Exhibit 3. Would you look at that document, please? That's a five page document. Is that your signature appearing on page 5 of the document?

A Yes, it is my signature.

Q And this document's been reviewed by -- reviewed and signed by you before today?

1 A Yes.

2 Q Would you like to make any changes to this statement
3 at this time?

4 A No, I don't.

5 MR. NEELY: The witness is now ready for cross
6 examination, Your Honor.

7 JUDGE FRYSIK: All right. Thank you. Mr. Ward?

8 CROSS EXAMINATION

9 BY MR. WARD:

10 Q Good afternoon, Mr. Linder. We've met before. And
11 on page 2 of your testimony you refer to your employer as
12 being KMHL Broadcasting Company in Mankato.

13 A Correct.

14 Q Could you tell us what is your, what is your
15 position title?

16 A I call myself Financial Assistant.

17 Q That title would seem to imply that you are
18 assisting some other person in financial matters. Who would
19 that person be?

20 A Well, I assist whoever needs assisting. I assist
21 the Manager there. I do some of the paperwork for KMHL
22 Broadcasting.

23 Q KMHL Broadcasting is the licensee of, of several
24 stations?

25 A At the moment it's the licensee of KKCK, KMHL and I

1 | believe KARL.

2 | Q What are those stations -- what communities are
3 | those stations licensed in?

4 | A KMHL and KKCK are licensed to Marshall, Minnesota.
5 | KARL is licensed to Tracy, Minnesota.

6 | Q And who owns KMHL Broadcasting Company?

7 | A Minnesota Valley Broadcasting Company owns KMHL
8 | Broadcasting Company and they're located in Mankato.

9 | Q And they're also the licensee of stations
10 | indirectly, are they not?

11 | A Yes. The Mankato station, KTLE and KTOG.

12 | Q And you own something in excess of 9 percent of
13 | that, of that company?

14 | A Yes. As far as I know it's around 9 percent today.

15 | Q I'm sorry?

16 | A As far as I know it's around 9 percent today, yes.

17 | Q And that was -- was that interest a gift to you last
18 | -- roughly last Christmas?

19 | A Yes, the end of 1992.

20 | Q From your father?

21 | A Yes, it's from my father.

22 | Q And he is the principle stockholder of --

23 | A Yes, he is.

24 | Q -- of the Mankato licensee?

25 | A Well, of Minnesota Valley Broadcasting.